IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1596 of 1990

WITH

CIVIL APPLICATION NO. 6431 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF SOLANKI R BHAVSANG- GAJARABEN D/O RANCHODBHAI B

Versus

HEIRS OF P J PATEL- SURYAKANT PURSHOTTAM PATEL

Appearance:

1. Special Civil Application No. 1596 of 1990

MR RA PATEL for Petitioner No. 1-1/2

MR SURESH M TRIVEDI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 03/10/2003

ORAL JUDGEMENT

(1) By means of this petition the petitioner has sought for quashing and setting aside the judgment and order dated 13th September 1988 passed by Gujarat Revenue Tribunal, Ahmedabad, whereby the petitioners were not

treated as a tenant in respect of 1 acre & 7 gunthas of survey No.888 of village Alarasa, Taluka Borsad, District Kheda.

(2) It is stated that the father of the petitioners was a tenant of the disputed agricultural land bearing survey No. 888, admeasuring 2 acres and 14 gunthas since 1932. No proceeding under Section 32(G) of the Bombay Tenancy and Agriculture Lands Act had been started by the Mamlatdar and A.L.T., Borsad, hence the petitioner made an application before the Mamlatdar and A.L.T. to fix the purchase price of the aforesaid land on 14.07.1973. The Mamlatdar and A.L.T. held an inquiry and decided the application being Tenancy Case No. 32 G-263/71 vide order dated 10th July 1978 holding that the petitioners are entitled to purchase the half of the disputed land and directed to restore the possession of the half of the disputed land to the petitioners. Against that order, the petitioners preferred an appeal being tenancy appeal No. 1248 of 1979. The landlord also preferred an appeal being Tenancy Appeal No. 1439 of 1979 before the Deputy Collector. The Deputy Collector vide order dated 29th September 1980 had dismissed the appeal of the petitioners and allowed the appeal of the landlord holding that the petitioners were not the tenants of the disputed land. Against that order petitioners preferred Revision

Application, being Revision Applications Nos. 1278 and 1279 of 1980 before the Gujarat Revenue Tribunal. The Tribunal vide its order dated 20th December 1982 allowed the Revision Application and remanded the matter back to the Deputy Collector, Kheda for deciding the appeals in accordance with law. With reasoning after remand in the tenancy appeal No. GRT Remand/6510 of 1984, the Deputy Collector held that the petitioners are the tenants of the entire area. The Deputy Collector allowed the appeal

holding that the petitioners are the tenant of the entire area i.e. 2 acres 14 gunthas and dismissed the appeal of the landlord respondents. Against the order passed by the Deputy Collector, the respondent landlord preferred Revision Application being Revision Application No. TEN.B.A.-1451 of 1984. The Tribunal allowed the Revision Application in part holding that the petitioners are not the tenant of the half disputed land confirming the order of Mamlatdar and accordingly amended the order of the Deputy Collector. Being aggrieved and dissatisfied with the order passed by the Tribunal, this Special Civil Application has been preferred.

(3) It is contended by the learned Counsel for the petitioner that the old Tenancy Act, 1939, wherein the father of the petitioners had obtained a status of protected tenant under Section 3, 3A and 4 and the rights of the petitioners' father had been saved by the new Tenancy Act, 1948 by Section 89 of the Act, the legal position of the tenancy rights of the petitioner has not been considered at all by the Tribunal. The Tribunal has committed an error in drawing presumption regarding the protected tenant, which is not in accordance with law, as the Tribunal has not considered the provisions of Section 4(1)(B) of the old Tenancy Act of 1939, wherein it is provided that the person, who is in possession of the land in the year 1945-46 is a protected tenant cannot be dispossessed without following due process of law. As such the possession obtained by the landlord is unlawful and against the statutory provision of law and that has also not been considered by the Tribunal. The further contention of the learned Counsel for the petitioner is that the Tribunal has not considered the tenancy rights of the petitioner for the period prior to year 1946-47. As per provision of Section 5 of the old Tenancy Act, 1939 the landlord cannot obtain possession of the land without due notice of 1 year to the tenant and without due procedure of law. The Tribunal has also not considered the provisions of Section 24(1A) of the amending Act of 1946, wherein the procedure has been provided for obtaining the possession from the tenant by the landlord. It is also contended that as per the

amending Act, 1946,inspite of the fact that the rights of the tenancy have already been created in favour of the petitioners' father, it cannot be considered that there was no tenant on the land. As such the presumption raised by the Tribunal is illegal and bad in law. It is also argued that the father of the petitioner had been in possession through out from 1933-34 to 1943-44 for the entire area of the disputed land in the Village Form 7/12 for the year 1944-45, 1945-46, 1946-47, the name of the landlord was appeared as a sole cultivator of the disputed land. The entry of the name of the respondents' father in the Village Form record 7/12 is illegal and even after 1947-48 the entry is also illegal. The cancellation of the name of the name of the petitioners' father for half of the land cannot take away the rights of the tenant, as the petitioners' father name continued in the village record up to 1946, thereafter the name of respondents' father continued on the half portion of the land in dispute. The Tribunal came to the wrong conclusion that the petitioners' father has lost his tenancy rights after 1946, which is illegal and not sustainable in the eye of law, as once right is created, cannot be cancelled without any order of the Competent Authority. As no application was made by the landlord, hence the rights already created in favour of the

petitioners' father cannot be held terminated. The name of the respondents' father is shown in the Village Form record in possession as Mode No. 4. The respondent cannot be entitled for any benefit on account of the mistake committed by Talati-cum-Mantri in this respect. Presumption raised by the Tribunal is not correct. No order has been passed by the Competent Authority holding petitioner as an unauthorized occupant. Hence, petitioner's right for tenancy over the entire disputed property cannot be neglected. The contentions of the Learned. advocate of the petitioner regarding the tenancy of the entire land have not at all been considered by the authority concerned. It is also pointed out that the tenant will be deemed to be protected tenant as per the amendment of Section 3 of the

Bombay Tenancy Act, 1939, which follows as:

(a) If he has held such land continuously for a period of not less than six years immediately preceding either:

(i) the first day of January 1938, or
(ii) the first day of January 1945 ;

(4) As per the amendment Section 3A by Section 6 of the Bombay Tenancy Amendment Act, 1946, on the expiry of one year from the date of the coming into force of the Bombay Tenancy(Amendment) Act, 1946, the tenant shall be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar for declaration that the tenant is not a protected tenant. As per Section of the Amending Act every tenant shall be deemed to be a protected tenant for the purposes of this Act, if he-

(a) held any land and cultivated it personally continuously for a period of not less then six years immediately preceding the first day of April 1937 and was evicted from such land on or after such date otherwise than by order of Competent Court on any of the grounds specified in sub-section (2) of Section 5, or,

(b) held any land and cultivated it personally continuously for a period not less then six years immediately preceding the first day of April 1944 and was evicted from such land or after such date otherwise than by order of a competent court

(5) As per Section 24 of the Amendment Act, (1A) was inserted in Section 24 of the said Act and no landlord

shall obtain possession of any land held by a tenant except under an order of the Mamlatdar for obtaining such order he shall make an application in the prescribed form. The Learned Counsel for the petitioner relied upon the decision of this Court in the Case of Jethabhai Dudhabhai Vs. Baiharkha, reported in 1985, GLH 77, wherein it has been observed that the Bombay Tenancy Act is a beneficial provision enacted with a view to see that the economically weaker section of the society get advantage of such provision and illiterate and downtrodden people are not deprived on their rights judicially mentioned and/or excellence does not lie in achieving some logically correct results through the hipper technical process of the reasoning and mechanical approach and the Tribunal can interfere in the revision only on the ground No. (A) that the order of the Collector was contrary to law (B) that the Collector failed to determine some material issue of law (C) that there was a substantial defect in following the procedure provided by this Act or that there has been failure to take evidence or error in appreciating important evidence, which is resulted in miscarriage of justice. He also relied on the decision of this Court in the case of Patel Shanabhai Vithalbhai Vs. Patel Bakorebhai Vithalbhai and others reported in A.I.R., 1972, Gujarat 184, wherein it has been considered that Clause A of sub-section (1A) comes into operation in the cases, where a tenant has made or makes an application under sub-section 1 of Section 32. In the present case no such application has been made. Therefore, the provision does not come into operation. The provision, which applies, where the tenant has not made any such application within the time prescribed by sub-section (1) of Section 29 read with Clause B of sub-section (1A) of Section 32. In such a case the only disability for the tenant, which arises is that the landlord has created a fresh tenancy after obtaining the possession. After such a fresh tenancy has been created and after the application made by the tenant for possession under sub-section 1 of Section 29 has been rejected or has not been made any such application, such new tenant would be entitled to the benefit of the deemed purchase in Clause under Section 32 G read with Section 32(1). In other words all that has been enacted by

Clause B of sub-section (1A) of Section 32 is that if a tenant does not make any application and if meanwhile the landlord has created a fresh tenancy, the tenant will not be entitled to the benefit of Section 32(1) and 32 G, but new tenant will be entitled to the said benefit. Thus, it is clear that there is nothing in Clause (1A), which is in conflict or derogation on the rights conferred on the tenant by Section 32(1) it will be recorded. Sub-section 1 of Section 32 provides that every tenant shall on the first day of April 1957 be deemed to have purchased the land held by him as a tenant, subject to the rider that there is nothing to contrary in any other provision of the Section or any other provision of the Act. He also relied on the decision of the Supreme Court in the case of A. A. Shirdone etc. Vs. Saheb H. Taj Bhokhar reported in A.I.R. 1985, Supreme Court, 836, wherein it has been held that it cannot be said that a mortgagee in possession become deemed tenant under Section 2A of the Act of 1939 on the strength of the saving provision in Section 89(2)(B) of the Act of 1948. Even if that be so, the mortgagor holding a decree in redemption cannot get actual possession of the land from the mortgagee, as the mortgagor did not file an application for declaration before the Mamlatdar that the mortgagees were not the tenants within one year of coming into force of the Amendment Act, 1946 as provided in Section 2A and 3A of the Act of 1939. Thus, he lost whatever right he had. However, more relief for actual possession from the mortgagee, who claimed to be protected tenant could be granted only by the Revenue Court and not by other Court.

(6) The Learned Counsel for the petitioner also relied upon the decision of the Bombay High Court in the case of Nana Tukaram Havarkar & Ors. Vs. Smt. Chatura Govind Shaikh & Ors. reported in 2003, All India High Court cases, 2208, wherein it has been considered that

the legal position is that the petitioners have placed reliance on 7/12 abstract for over 35 years before institution on the application, which clearly indicates that the petitioners were lawfully cultivating the suit. There is no dispute that the petitioners were cultivating the said land to the knowledge and with the consent of the respondents. In that case the petitioners were persons, lawfully cultivating the suit land on the relevant date belonging to the respondents. In that case the possession shown in 7/12 abstract has been accepted.

(7) On the contrary, the Learned Counsel for the respondents contended that this writ petition has been filed under Article 227 and the scope of this Court under Article 227 is very limited only to seeing that an inferior court or Tribunal functions within the limits of its authority and not to correct an error apparent on the fact of the record. He relied on the decision of the Supreme Court in the case of Mohhemad Yunus Vs. Mohhemad Mustufa & Ors. reported in A.I.R., 1984, Supreme Court, 38, wherein it has been held that supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is limited "to seeing that an inferior court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. The High Court does not act as an Appellate Court or Tribunal. It will not review or revise the evidence, upon which the determination of the inferior court of Tribunal purports to be passed or to correct errors of law in the decision. As such, the High Court has no jurisdiction to interfere with the order of the subordinate Judge under Article 227 of the Constitution. He also relied on the decision of the Supreme Court in the case of Mani Nariman Daruwala and Bharucha through LRs & Ors. Vs. Phiroz N. Bhatena & Ors. reported in A.I.R., 1991, Supreme Court, 1494, wherein it has been held that if the finding has been recorded on the basis of material or evidence, the High Court in exercise of its jurisdiction under Article 227 of the Constitution was not justified in setting aside the finding of fact recorded by the Appellate Bench. He also relied upon the

decision of the Supreme Court in the case of Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte & another reported in A.I.R., 1975, Supreme Court, 1297, wherein it has been held that the power of superintendance of High Court under Article 227 being extraordinary is to be exercised most sparingly and only in appropriate cases. This power cannot be invoked to correct an error of fact, which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise exercise of its jurisdiction under Article 227 convert itself into a court of appeal, where legislature has not conferred a right of appeal and made the decision of the subordinate court or Tribunal finally on facts. As such the High Court cannot while exercising jurisdiction under Article 227 interfere with the finding of fact recorded by the subordinate court or Tribunal. Its function is limited to seeing that the subordinate court or Tribunal functions within the limits of its authority, it cannot correct mere errors of facts by examining the evidence and reappreciating it. The High Court cannot exercise this power even on the ground that the District Court has misread a part of the evidence and ignored another part of it. He relied upon the decision of the Supreme Court in the case of Sugarbai M. Siddiq & others Vs. Ramesh S. Hankare (dead) by legal

representatives, reported in 2001, Volume VIII, SCC, 477. The High Court under Article 227 of the Constitution can see whether the impugned order is vitiated by procedural irregularities. In other words the court is concerned not with the decision, but with the decision making process. On this ground alone, the order of the High Court is likely to be set aside. He also relied upon the decision of this Court in the case of Vimlaben Wd/O Rasiklal K. Joshi & Others Vs. Danabhai Kalyanbhai Rohit & Anr. reported in 2002 Volume I, GLR, 330, wherein it has been held as under :

"The Tribunal has rightly reappreciated the evidence, which was appreciated by the lower

authority. Now, this court cannot reappreciate the evidence again which was very well examined by exercising power under Article 226 and 227 of the Constitution and further considered the view taken by the Apex Court that this Court cannot act as an Appellate Authority and cannot reappreciate the very same evidences, which were rightly appreciated by the lower authorities. The observation of the Tribunal is purely based on the finding of fact, which cannot be disturbed by this Court while reappreciating the same evidence, while exercising power under Article 226 and 227 of the Constitution. Hence, the petition deserves to be dismissed."

(8) Heard Learned Counsels for the parties at length and perused relevant papers on record. As appears from the judgment of the Tribunal Parshottam Jiva was the landlord and there was no other person in the other rights column and in the "Khedhak" column Ranchhodbhai Bhavsang and Parshottambhai had been shown to have cultivated the land 1 acre 7 gunthas each under mode No.4 for the years 1950-51, 1951-52, 1952-53, 1953-54 and also 1954-55. From the year 1955-56 the aforesaid survey No. has been shown in the name of Parshottambhai under Mode No. 1 and that position continues up to 1972-73. The application was made by the tenant Ranchhodbhai Bhavsang to the Mamlatdar and A.L.T. with reference to the abstract from Village Form No. 7/12. Baijivi, Wd/O Bhavsang has been shown in the Khedhak column in the year 1931-32 for the entire area of Mode No. 3 has been shown. Her name appears also for the year 1932-33. In the same way, in the year 1933-34 the name of tenant has been mentioned. From the year 1935-36 the name of wife of tenant for her minor son finds place in the Record of Rights. From the year 1936-37 name of Ranchhodbhai is shown for the entire of 2 acres 14 gunthas under Mode No.

3. For the year 1937-38 the tenants' name has been shown on 1/4 share only under Mode No. 4. For the year 1938-39, 1939-40, 1940-41, 1941-42, 1942-43, 1943-44, the name of the tenant appears for the entire area under Mode No. 3. For the year 1944-45, the tenant and "Pote" are shown for 1 acre 7 gunthas each. For the year 1946-47 again the tenants' name is shown for 1 acre 7 gunthas under Mode No. 3 and for one acre seven gunthas is shown in the name of landlord under Mode No. 1. Then, after year 1946-47 "Pote" is redeemed for the entire 2 acres 14 gunthas under Mode No. 1. For the year 1947-48 the tenant and the landlord are shown in respect of half area each and both are shown under Mode No. 4. The same position continued for the years 1948-49, 1949-50, 1950-51, 1951-52, 1952-53 and 1953-54, as mentioned earlier. The tenants' name was not recorded for entire land in Village Form No. 7/12, then from 1954-55 to 1959-60 the name of the landlord has been shown on entire land,even then he made the application for the year 1970-71, 1971-72 and 1972-73, wherein the name of the tenant does not find place, either in the other right column or in the column of "Khedhak". The Tribunal has considered that the tenant has not examined himself the power of attorney holder, who happens to be his

son-in-law had no knowledge with respect to the facts as to whether there was any tenant, who cultivated the land before 1960. The Tribunal has also considered the evidence of the 4 witnesses, examined on behalf of the tenant and also 8 witnesses examined on behalf of the landlord. The Tenancy Act, 1939 was made operative to the Kheda district on 11.04.1946. The Amendment Act of 1946 was applied to the district Kheda and other parts of the State on 08.11.1946. It has also been considered that the name of the possessor has been shown in the Village Form No. 7/12 from 1946-47 to 1953-54. Tribunal has also considered the possession of the parties concerned before 01.04.1957 Tillers day. If the tenant losses his possession as a result of invalid dispossession before the tillers day, he is required to make an application for possession under Section 29(1) within the specified period, failing which, he would not be entitled to be a deemed purchaser. The Tribunal has considered the evidence, wherein the landlord Parshottambhai Jivabhai had admitted in his deposition

that half the area was cultivated by a tenant Ranchhodbhai up to 1947-48 and he would be a protected tenant under the provisions of Tenancy Act, 1939. It was also admitted by the landlord that he has not taken possession of the land under any orders of Mamlatdar.

The evidence of the witnesses has been considered regarding the possession of the tenant for a period 22 to 25 years. It is also considered that if a tenant was deprived of possession and does not take action under the Act, 1948, even then his tenancy would not be protected as subsisting. It was also considered that the Bombay Act, 1939 came into operation to the whole of Bombay province, except State of Bombay. Sub-section 2 and 3 were recasted by the Amending Act, 1941 and the act was reenacted by Amending Act, 1946, which was amended by Amending Act, 1946 and that came into force on 08.11.1946. That Act was applicable to the district Kheda from 11.04.1946 and the Amending Act was made operative from 08.11.1946. The Amending Act introduced a new chapter, Chapter 1A with Section 2A, whereby the person lawfully cultivating any land belonging to another person will be deemed to be a tenant if such land is not cultivated personally by the owner or a member of owners' family or his servant on wages, paying in cash or kind, but not in crops. Unless the owner makes an application to the Mamltadar within one year from 08.11.1946 that the person is not tenant. Sub-section 1 of Section 2A created a statutory presumption in favour of a person other than the member of the owners' family or his servant on wages. The presumption is that such a

cultivator is a tenant. The owner has to make an application one year for declaration that a person is not a tenant under Section 3 of the Act, 1939. A tenant is deemed to be a protected tenant in respect of the land. If he held it continuously for a period of not less then six years immediately preceding 01.01.1938 or 01.01.1945. If he has cultivated the land personally during that

period. Thus, every tenant after one year of coming into force of the Amending Act is required to be a protected tenant. Thus, a protected tenant is required to satisfy two conditions, besides being tenant under Section 2A.

(1) he had held the land continuously for a period not less then six years immediately preceding to 01.01.1938 or 01.01.1945.

(2) cultivated the land personally during that period. On expiry of one year from 08.11.1946 he will be deemed to be a protected tenant, if he held the land and cultivated it personally for six preceding years from 01.04.1937 or 01.04.1944.

(9) If he was evicted from such land on or after of such date without the order of the competent authority

and he cannot be evicted for the reasons other than those mentioned in sub-section 2 of Section 5. Section 7 of the Act, 1939 as per Amending Act, 1946 with effect from 08.11.1946 for the landlords right is to determine the protected tenancy by giving one years' notice in writing to the tenants for the reasons of personal cultivation or for non-agriculture purposes. As such, the landlord cannot obtain possession of the land held by the tenant, except under an order of the Mamlatdar, for which he is required to make an application in the prescribed form and the Mamlatdar is required to hold an inquiry. It was considered by the Tribunal that the name of Baijivi, Wd/O tenant and another appear in the Khedhak column in respect of the entire area of 2 acres 14 gunthas for the year 1931-32 and 1932-33. With the Mode of cultivation No. 3, name of the tenant appeared for the entire area from 1933-34 to 1943-44 and the cultivation has been mostly by Mode No.3. As such, in 6 years Parshhotambhai, landlord was not cultivating the land himself and had given it for cultivation to the tenant. During the initial two years, Baijivi cultivated it. For the first time in the year 1944-45 and 1945-46 the land appears to have been cultivated by both landlord as well as tenant under Mode No. 3 and Mode No. 1 respectively to the extent of 1 acre and 7 gunthas each. For the year

1946-47 the entire land 2 acres 14 gunthas appeared to have been cultivated by the landlord as Mode No. 1. Again from 1947-48 onwards up to 1953-54 both tenant as well as the landlord appeared to have cultivated 1 acre 7 gunthas each i.e. half the area of the survey each and mode of cultivation is shown as No. 4 against each of these two persons. It has also been considered that from 1954-55 the entire land 2 acres and 14 gunthas has been shown in the name of the landlord and there is no name of the tenant. The Tribunal has considered that the suitable changes in the Record of Right was manipulated to show that after the Act came into force, there was no tenant in the land. The Tribunal considered that entire land was in cultivation of the tenant from 1933-34 up to 1943-44. Thereafter in the years 1944-45 and 1945-46 the landlord and tenant appeared to have cultivated half:half the land. Thereafter, the entire land is shown to have been cultivated by the landlord "Pote" in 1946-47 and subsequent years from 1947-48 up to 1953-54. The Tribunal has appreciated the evidence on record and came to the conclusion that it is not possible to believe that only for one year 1946-47 the entire land would have been cultivated by landlord himself and it must have been designed to manipulate or to cause changes and position in the record. On the basis of the long possession of

the tenant the tenant was entitled to be treated as Ranchhodbhai, tenant appeared to have cultivated as per Amending Act the landlord could have dispossessed tenant without an order of the Mamlatdar prior to 08.11.1946 and Ranchhodbhai, tenant appeared to have cultivated one half portion i.e. 1 acre 7 gunthas. Hence, the Tribunal found that from 1947-48 there can be no denial that the Ranchhodbhai Bhavsang was there on the land as a tenant. As the landlord was required to move an application under Section 2A to the Mamlatdar for declaration that the person is not a tenant from 1947-48 and onward. The mode of cultivation as shown is No. 4, had the landlord was cultivating personally, the mode of cultivation would

have been No. 1 or cultivated through members of his family, then mode would be No. 2. If the cultivation done through labourers, through payment of wages in cash, then the mode would be No. 3. The Tribunal could not believe how the landlord can be treated as cultivating the land himself, yet showing Mode No. 4 for several years from 1947-48 up to 1953-54. The Tribunal find, even if the Mode No. 4 mentioned against the name of the landlord for the years 1947-48 onward up to 1953-54 has been shown by mistake, even then it appears that the tenant was cultivating half area i.e. one acre seven gunthas. In these years under Mode No. 4 as stated

Ranchhodbhai was a tenant atleast for half of the area of the said survey number. After 08.11.1946 a tenant is deemed to be a protected tenant if he held the land continuously for a period not less then 6 years preceding 01.01.1938 or 01.01.1945 immediately preceding 6 years. The land has been cultivated by the tenant, wherein the years 1943-44 when the cultivation of half area is shown for the rest of the years, he has not been shown to have been cultivated the entire area of two acres fourteen gunthas. The possession of the tenant cannot be denied atleast for half area and he would be protected tenant under Section 3A, as no application was made by the landlord before the Mamlatdar for declaration that the tenant is not a protected tenant. Thus, under the old Tenancy Act and Amendment Act of 1946, the claim of the tenant to be treated as tenant cannot be denied. The position of the landlord was also considered, wherein it is mentioned that the half of the area of the land was cultivated by the tenant himself 25 years ago. In the peculiar facts and circumstances of the case the entries made in the column of Village Form No. 7/12 have presumptive value that cannot be denied in the present case. Regarding termination of tenancy by voluntary surrender by the tenant it is also been considered that the new rule 2A had been added to the Tenancy Rules and

rule 2A came to be applied from 13.04.1953. As such

tenant could have surrendered without having made an application to the Mamlatdar for getting his order or without the landlord having to make an application for the possession of the land under Section 29(2) of the Act. If the landlord forcibly takes the possession and no application is made by the tenant or the tenant surrenders the property on or before 13.04.1953, the landlord is not required to move an application before the Mamlatdar, A.L.T. for a declaration that the person in possession of the land cultivating is not a tenant. If after 13.04.1953 even the tenant surrenders voluntarily the land it was required to be in writing and verified by the Mamlatdar. As such the tenant could not have legally surrendered one acre seven gunthas land held by him without following due process of law and such surrender would be invalid in respect of the possession of landlord was shown in the Record of Rights. Tenant must be in actual possession and cultivating the land on 01.04.1957 under Section 32(1A) and Section 32(1B) would have no application in the present case. As per Record of Rights on 01.04.1957 the tenant was not shown in possession, hence he could not be deemed to be purchaser, but the Tribunal earlier held that tenant was in actual possession over the half of the plot i.e. 1 acre 7 gunthas and his name appeared up to year 1953-54 and he could not have surrendered the land to the landlord. Even if he had surrendered that would be illegal or forcibly dispossession. Thus, the tenant was considered to be a protected tenant even though on 01.04.1957 his name was not in the village record 7/12 and he will be deemed that he had not surrendered the land as per the law and in that respect his tenancy rights regarding half of the area as on 01.04.1957 cannot be denied. I have also considered the provisions of Shedule 1 of Section 89 prescribed in the Bombay Tenancy & Agricultural Lands Act, 1948, wherein the tenant shall be deemed to be a protected tenant in respect of any land if he has held such land continuously for a period not less then six years immediately preceding either (1) the first day of January 1938 or (2) the first day of January 1945. If we consider the entries made in the record of rights Village Form 7/12, the tenant would not be able to establish to be a protected tenant, as he must be in continuous possession for cultivation for atleast for six years on

1938. The record shows that the name of Ranchhodbhai appears in the Village Form No. 7/12 from the year 1933-34, 1934-35 and he was not in possession in the year 1935-36. Though he was shown in possession in the year 1936-37, 1937-38 on 1/4 share in Mode No. 4. In the

year 1939-40 he has been shown over the entire land, but the rent is shown as 50% i.e. Rs. 17. Though in the earlier year rent is shown Rs. 35. Thus, in the year 1939-40 he appears to be in half portion of the land. No doubt, the tenant is shown in possession from 1940-41 up to 1943-44 as such he could not be said to be in possession six years immediately on 1st January 1946. The tenant and landlord are shown in possession over half portion each in 1945-46 then 1946 and 1947 the tenants' name appears to be cultivating entire land. Thereafter both the tenant as well as the landlord appeared to have cultivating the land up to 1953-54 half portion each in Mode No. 4. The Manual of Revenue Accounts published by the Gujarat Press shows only three types of Modes of cultivation

(a) Self i.e. by own labour
(b) by the labour of any member of ones family
(c) cultivated under personal supervision of oneself or any member of ones family by hired or by servant of wages payable in cash or kind, but not in crops share.

(10) Thus, the Manual shows only three types of modes

of cultivation, but in the present case record of rights of the Village Form 7/12 shows 4 types of modes of cultivation. Thus, in respect of 4th mode of cultivation, none of the learned Counsel for any of the parties could be able to point out in order any authority could show such 4th type of mode. As such the mode No. 4 appears not to have been recognized by the Revenue

Department. If such entries are found in the village record, then the persons of the department having special knowledge would be better persons to know and adjudicate the possession on that basis. The Tribunal has also found that the possibility of manipulation in the record cannot be ruled out on the legal basis, on the evidence of both the parties on record. The Tribunal has reappreciated the material produced and evidence led by the parties, each and every aspect and the Tribunal does not appear to have committed any error in arriving at the conclusion on the basis of the evidence on record as well as the legal position, regarding possession of the tenant as well as the landlord on the basis of the Record of Rights Village Form No. 7/12 and evidence of both the parties. As such this petition has no merits. Moreover, the finding of fact has been recorded by the Tribunal on the reassessment of the evidence and material on record. Thus, the finding cannot be reappreciated and interfered

by this Court under Article 227 of the Constitution. Accordingly the petition is dismissed. Rule discharged with no order as to costs.

In view of this, this Civil Application does not survive. Interim relief stands vacated.

(Kundan Singh, J.)

/MPS/